REMARKS

Reconsideration of the above-identified application is respectfully requested in view of the following amendments and remarks.

Claims 1-8 and 10-21 are pending and stand rejected.

Claims 1, 6 and 17 are independent claims.

Claims 1, 5-8, 10, 15 and 17-19 have been amended.

Claims 1-8 and 10-20 stand rejected under 35 USC 102 as being anticipated by Hashimoto (USP 5,706,271, hereinafter D1). Claim 21 stands rejected under 35 USC 103 as being unpatentable over D1.

Applicant thanks the Examiner for taking the time to discuss, telephonically, the proposed amendments to the claims and the Applicant's position that the used of the term "filled" provides further clarity of the subject matter claimed and further distinguishes the invention claimed over the cited references. Applicant repeats the arguments discussed herein.

In supporting the rejection of the claims 1-8 and 10-121 under 35 USC 102, the Office Action asserts "that D1 discloses a record carrier comprising a plurality of areas (PCA having 6-6a and 7-7a) for storing disc management information and a designation area (7) said designation area including a predefined number of clusters (7a), said predefined number being associated with a number of said plurality of areas (6a), wherein one of said clusters is associated with a corresponding one of the plurality of areas for storing disc management information (each 1-100 7a corresponding to 1-100 6a), wherein signals in the designation area indicate which corresponding one of said plurality of areas for storing disc management information is in use (col. 2, lines 1-7).

Applicant respectfully disagrees with and explicitly traverses the rejection of the claims.

D1 discloses a system for managing writing data into a data area by calibrating the laser power to be used in writing the data area. D1 discloses a test area (6) divided into first partitions (6a) that are used to calibrate the laser power used to write into the data area (PCA). In addition, D1 discloses using a data management area to record a number of times the first partition (6a) has been used write into the data area. (see Figure 3). D1 further discloses, in a second embodiment of the device, that a second partition (7a), corresponding to the first partitions (6a), is used to calibrate the laser power. D1 discloses that the second partitions represents a number of times (We) that a corresponding first partition has been used to calibrate a laser power to be used in writing into a data area. (see col. 6, lines 45-60; number We partition 6a has been written into).

When the number We, indicating the number of times the corresponding partition in 6a has been used, is less than a maximum number, then the corresponding partition 6a is used to calibrate the laser power that is to be used to write the data to the corresponding data area. If the number We is greater than the maximum value then the partition is no longer usable. See for example, col. 7, lines 22-23 in "S12 whether or not number We read in is good or unusable state." [sic]

Hence, D1 teaches a system that maintains a count of a number of times (in partition 7a) that a calibration has been performed in a first partition (6a), which determines the laser power that may be used in writing data into a data area. D1 further discloses that if the number of times the calibration partition is less than a maximum value then the partition is usable. However, if the number of times the calibration partition exceeds the maximum value, then the partition (and the corresponding data area) is no longer usable.

Thus, D1 teaches a system that determines whether a test area (and indirectly the corresponding data area) is usable to be written into or is no longer usable to be written into.

In addition, D1 fails to teach that whether the number of counts within the second partition (assuming the second partition is comparable to the detection area of the instant application) is in use, as is recited in the claims. That is, the count in partition 7a is able to determine whether the corresponding first partition (6a) can be written into and has been used. However, the count cannot determine whether the partition 6a *is in use*, but rather, the count can only tell that the partition 6a is not usable.

Thus, D1 fails to teach or disclose whether the corresponding partition 6a is in use but merely that the corresponding partition is usable.

Notwithstanding the remarks made, herein, the independent claims, and select dependent claims, have been amended to recite the term "filled" rather than "in use." No new matter has been added. Support for the amendment may be found at least on page 4, lines 9-14 ("In these single layer and dual layer discs at least one TDMA area is available, that is TDMA0. In an embodiment of the invention a predefined number of clusters of the at least one TDMA area (TDMA0) is reserved to indicate a *filled TDMA*. This predefined number corresponds to the number of TDMA areas. In an alternative embodiment the at least one TDMA area (TDMA0) is followed by a Detection Area consisting of a predefined number of clusters reserved to indicate a filled TDMA (see figure 4).").

As discussed above, D1discloses that the count in second partition 7a is used for determining whether a corresponding first partition 6a is suitable for being used to calibrate a laser power that would be used in writing data to a corresponding data area. D1 thus determines whether the corresponding first partition area is usable or not usable, and fails to teach that the corresponding

data area is "is in use." In addition, the count in second partition 7a cannot determine whether the corresponding first partition 6a is filled. Rather even if the count in second partition 7a exceeds the maximum value and the first partition is unusable. And the unusability is associated with the ability to write data to the corresponding data area because it is not possible to calibrate a laser power and not associated with the data area being filled, as is recited in the claims.

A claim is anticipated if and only if each and every element is recited in a single prior art reference.

In this case, D1 cannot be said to anticipate the subject matter recited in claims 1, 6 and 17, as D1 fails to disclose the element of determining whether the data area is filled, as is recited in these claims.

With regard to the remaining claims, these claims are dependent from corresponding ones of the independent claims and, hence, these remaining claims are also not anticipated by D1 by virtue of their dependency upon an allowable base claim.

With regard to the rejection of claim 20 as being unpatentable over D1, applicant respectfully disagrees with and explicitly traverses the rejection of the claims.

In supporting the rejection of the claims, the Office action asserts that having one less of the number instead of being equal simply provides for the obvious which would lies in the common sense of an ordinary skill ... when at the beginning of the use of the record carrier, the very first area of the plurality of areas is the one that obviously is going to be used, hence, no indication whether in use or unused is necessary at the start, hence one less cluster would be necessary.

Contrary to the assertions made in the Office action regarding the use of one less cluster as being unnecessary, D1 teaches that the areas (7a) are used to count a number of times a particular area (6a) has been used to determine whether a corresponding data are may has been written into. Hence, D1 requires that the number of second partitions 7a be the same as the corresponding first partition 6a so that the count of the number of times the first partition 6a has been used to determine a calibration of a laser power to be used in writing data in the corresponding data area.

If D1 were modified as suggested by the Office action, then the data area associated with a corresponding area in the first partition (6a) that does not have a corresponding area in the second partition (7a) (i.e., one less) would either be never written into, written only once or written too many times (as there is no means to track the number times that this area within the first partition and the subsequent data area is written into.

Furthermore, if D1 were modified by the process suggested by the Office action, then D1 would fail to provide for monitoring the number of times in the first area of the first partition was used to calibrate a laser power and other mechanisms would be necessary to determine whether the first of the first partition were written into at all.

Hence, D1 cannot be modified to include on less area in the first partition (6a) for counting the number of times (partition 7a) a first area in first partition 6a has been used to calibrate a laser power. Thus, it is not simply an obvious design choice to modify D1 to include one less cluster within partition 7a, as is asserted in the claims.

For the remarks made herein, Applicant submits that the reason for the rejection has been overcome.

For the amendments made to the claims and for the remarks made, herein, applicant submits that the reason for the rejections of the claims has been

overcome and respectfully requests that the rejections be withdrawn and a Notice of Allowance be issued.

Applicant denies any statement, position or averment stated in the Office Action that is not specifically addressed by the foregoing. Any rejection and/or points of argument not addressed are moot in view of the presented arguments and no arguments are waived and none of the statements and/or assertions made in the Office Action is conceded.

Applicant makes no statement regarding the patentability of the subject matter recited in the claims prior to this Amendment and has amended the claims solely to facilitate expeditious prosecution of this patent application. Applicant respectfully reserves the right to pursue claims, including the subject matter encompassed by the originally filed claims, as presented prior to this Amendment, and any additional claims in one or more continuing applications during the pendency of the instant application.

In order to advance the prosecution of the matter, applicant respectively requests that any errors in form that do not alter the substantive nature of the arguments presented herein be transmitted telephonically to the applicant's representative so that such errors may be quickly resolved or pursuant to MPEP 714.03 be entered into the record to avoid continued delay of the prosecution of this matter any further.

MPEP 714.03 affords the Examiner the discretion, pursuant to 37 CFR 1.135 (c), to enter into the record a bona fide attempt to advance the application that includes minor errors in form.

> "[a]n Examiner may treat an amendment not fully responsive to a non-final
> Office Action by: (A) accepting the amendment as an adequate reply to

the non-final Office action to avoid abandonment ... (B) notifying the applicant that the reply must be completed... (C) setting a new time period for applicant to complete the reply ...

The treatment to be given to the amendment depends upon:
(A) whether the amendment is bona fide; (B) whether there is sufficient time for applicant's reply ... (C) the nature of the deficiency.

Where an amendment substantially responds to the rejections, objections or requirements in a non-final Office action (and is bona fide attempt to advance the application to final action) but contains a minor deficiency (e.g., fails to treat every rejection, objection or requirement), the examiner may simply act on the amendment and issue a new (non-final or final) Office action. The new Office action may simply reiterate the rejection, objection or requirement not addressed by the amendment (or otherwise indicate that such rejection, objection or requirement is no longer applicable).

This course of action would not be appropriate in instances in which an amendment contains a serious deficiency (e.g., the amendment is unsigned or does not appear to have been filed in reply to the non-final Office action)..."

However, if the Examiner believes that such minor errors in form cannot be entered into the record or that the disposition of any issues arising from this response may be best resolved by a telephone call, then the Examiner is invited to contact applicant's representative at the telephone number listed below to resolve such minor errors or issues.

No fees are believed necessary for the timely filing of this paper.

Respectfully submitted,

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